of the first class went too far in allowing the use of eminent domain for the creation of private trout ponds; and in this he was alone. *Turner* v. *Nye*, 154 Mass. 579. He and the remaining three Justices (Allen, Lathrop, Morton) went so far as to agree with the others in recognizing in the Gas and Electric Lighting Case (*Opinion of the Justices*, 150 Mass. 592), the propriety of the furnishing of artificial light by the State. These four Justices, however, the majority of the court, are generally against statutes which seem to involve either more regulation of industry, or any change in the mode or extent of doing business by the State (for a consideration of the cases, see an article by Mr. Jabez Fox, in 5 HARVARD LAW REVIEW, 30).

Such a continued and outspoken difference of opinion must go far toward preventing the decisions of the court from having the authority upon the subject which they otherwise might, and toward keeping the general question of the advisability of such frequent declaring of laws unconstitutional an open one. It is also to be noted that the views of the present majority are opposed to what are currently believed to be certain tendencies of the present development of society. It will be extremely interesting to see whether, when thus opposed, the tendencies will prove to be only ephemeral, or whether, the tendencies remaining, legislation of these kinds will be blocked only for a time.

ENGLISH AND SCOTCH LAW — SALE OF GOODS ACT. — In 1888, Judge Chalmers drafted a codification of the Law of Sales of Personal Property, with the object of assimilating the Scotch and English law on this subject. Since 1889, it has been before Parliament, and, on February 20, it received the Royal assent. It makes little change in the law in England, but very important changes in the law of Scotland, especially in regard to the passing of the property in specific goods sold but not delivered, and also in regard to the law of warranty (*actio quanti minoris*).

It is interesting to American lawyers — who see a similar process going on in Louisiana — to observe the progress the English law has been making in Scotland since the Union, and especially during the last fifty years. The passage of this Act is only one of many indications to this effect. One might cite numerous other statutes in this connection. The Mercantile Law Amendment Act of 1856, for instance, extended to Scotland several important features of the English law of sales. It changed much of the Scotch law respecting warranties as to quantity and quality, and introduced many of the practical effects of the rule, although not the rule itself, that the title to specific goods sold passes by force of the contract alone. Nor has this process of assimilation been effected entirely by statutes. Judicial legislation has accomplished much. The House of Lords, as Supreme Court of Appeals from Scotland, has exercised no influence in this direction. Through this channel, for instance, the right of stoppage *in transitu* appears to have made its way north.

As the old intimacy of Scotland with France and the Continent profoundly affected her law, public and private, so now her close association with England seems to be leading to similar results. Naturally, this "reception" has been confined chiefly to commercial law. But many other branches of the law have been influenced more or less. One need only cite the introduction of trial by jury, even in civil cases, and as a

result the importation of much of the English law of evidence, — a result which, by the way, has not followed from the introduction of the jury on the Continent. While the English law shows an occasional trace of Scotch influence, the reverse is very much more common and apparent, and one may look for further evidence of it in the future.

FIXTURES — VENDOR *v.* PRIOR MORTGAGEE. — The Court of Appeal last month, in the case of *Gough* v. *Wood & Co.*, 10 Times L. R. 318, decided that an agreement between the vendor of a fixture and a lessee that the fixture should remain the property of the vendor until wholly paid for, was a bar to the right of the mortgagee of the lease. The mortgage in this case was executed before the annexation of the chattel, and neither the mortgagee had notice of the agreement nor the vendor of the mortgage. The court followed the decision of North, J., in *In re Maryport Hematite Iron Co.* (1892), 1 Ch. 415, — a case precisely similar to this, except that the mortgage there included machinery, etc., "hereafter to be acquired." Weight was also put upon the case of *Sanders* v. *Davis*, L. R. 15 Q. B. D. 218, where the mortgage by a lessee of chattels annexed by him was held superior to a prior mortgage of the premises by the lessors.

It is law both in England and this country that fixtures annexed by the mortgagor, whether before or after the mortgage, go to the mortgagee (*Walmsley* v. *Milne*, 7 C. B. N. S. 115; *McLaughlin* v. *Nash*, 14 Allen, 136; *Davenport* v. *Shants*, 43 Vt. 546; *Brennan* v. *Whitaker*, 15 Ohio St. 446), and this rests upon the obviously good reason that a mortgagor, knowing the mortgagee's title in the property, may be said to have chosen to add to its value for his own purposes while in possession, and in view of his own equity of redemption. The case of real difficulty is the one where the mortgagee's interest is not harmed, and the annexation is after the mortgage by an ignorant vendor. It may be said that the vendor, although ignorant of the mortgage, has yet consented to make his property part of the soil, and so must be content to abide the consequences; and there are cases in line with such a result, *Clary* v. *Owen*, 15 Gray, 522 (and compare the cases of partners taken in after the mortgage, *Ex parte Cotton*, 2 M. D. & D. 725; *Cullwick* v. *Swindell*, L. R. 3 Eq. 249). Or one may take the view of the present case, and give the vendor his property, allowing the privity between him and the mortgagor to overbalance his act of annexation, when that is in ignorance of the mortgage. *Davenport* v. *Shants*, *supra*. The reasons given in the case under discussion, however, that the mortgagee may be assumed to have consented to the annexation, seem a little hard to reconcile with the law that forfeits to the mortgagor his own fixtures. If the mortgagee is to consent to a third party's putting fixtures on the land for the use of the mortgagor, why cannot he be said to consent to the mortgagor's putting his own upon it? The reason would seem to be better stated by the justice of the case, that the mortgagee is not hurt by the removal, and the innocent vendor's property is not lost to him.

With the exception of the case of *Davenport* v. *Shants*, there does not seem to be any authority precisely in point, for it is submitted that *In re Maryport Co.*, where the mortgage covered all to be acquired, goes further, and is really unfair to the mortgagee, whom the law wishes particularly to protect, not putting him in the position of landlord to tenant; while *Sanders* v. *Davis*, *supra*, also relied on by the Court, is really